

1955

November 23

*These opinions on
fair trade contract
relating to druggists*

Mr. James J. Barry, Commissioner
Department of Public Welfare
State House Annex
Concord, New Hampshire

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CONCORD, N.H.

Dear Mr. Barry:

You have inquired by your letter of November 16, 1955, whether non-signatory druggists are bound by a valid fair trade contract properly entered into by another druggist in this state. This question has never been specifically decided by our Supreme Court, but it is my opinion, based upon the majority ruled, that the answer to your question would be answered in the affirmative.

RSA 357:2 provides that it is unfair competition and actionable for any person to sell at less than a fair traded price whether or not such person is a party to the contract. As stated above, it is my opinion that this provision would be held valid. This question has arisen many times in relation to possible violations of federal law in connection with goods sold in interstate commerce. The Congress originally provided by the Miller-Tydings Act, 15 U.S.C.A. 1, that valid contracts under a state fair trade law would not be violative of the federal antitrust law. It was subsequently held that this exception did not apply to transactions under state laws which bound non-signatory sellers. By the McGuire Act, 15 U.S.C.A., sec. 45, the exception was broadened to cover non-signatory sellers so that such a provision in a state act is now no longer repugnant to the federal antitrust law.

Very truly yours,

Richard C. Duncan
Assistant Attorney General

RCD/T